IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANNAPURNABEN KHIMJIBHAI MAKWANA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR NK MAJMUDAR for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/06/2001

ORAL JUDGEMENT

The petitioner applied for electricity connection for industrial purpose at the premises in the sim of village Maska in Mandvi Taluka of Kachchh District. The respondent-Gujarat Electricity Board required the petitioner to pay the outstanding dues of the previous owner of the premises in question. The respondent-Board rejected the petitioner's application dated 29.11.1998

for electricity connection at the aforesaid premises by the letter dated 14.12.1998 from the Deputy Engineer of the respondent-Board. It was also mentioned in the said letter that the litigation was pending between the Gujarat Electricity Board and the previous owner of the premises in question and that the electricity connection could not be supplied to the petitioner without payment of the dues of the previous owner to the respondent-Board.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the aforesaid demand.

3. It is contended by the learned counsel for the petitioner that the previous owner has succeeded in the Civil Court at Bhuj as per the judgment and decree dated 26.2.1999 passed by the learned Civil Judge (S.D), Bhuj in Special Civil Suit Nos. 147/93 and 9/95, the previous owner has succeeded and the respondent-Gujarat Electricity Board has lost.

4. The learned counsel for the respondent-Board states that the First Appeal filed by the Board against the decrees passed by the Civil Court at Bhuj is pending before this Court. The learned counsel has, however, not in a position to contend that pendency of the appeal can justify rejection of the petitioner's application. It is also contended that in view of the principle laid down in the case of Isha Marbles, the bona fide purchaser cannot be saddled with the liability of the previous owner.

5. Considering the above submissions, the petition deserves to be partly allowed. The respondent-Gujarat Electricity Board is directed to reconsider the petitioner's application dated 29.11.1998 for electricity connection as an application for fresh supply of electricity without insisting for the electricity dues of the previous owner. The application shall be considered in accordance with the other relevant rules expeditiously and in any case within one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

It is clarified that whether the principles laid down in the Isha Marble's case will apply to the facts of the present case or not is not required to be decided at this stage since the previous owner has succeeded in the litigation before the Civil Court at Bhuj and the appeal against the same is not yet decided by this Court.

6. Rule is made absolute to the aforesaid extent

with no order as to costs.

Liberty to apply in case of difficulty.

(M.S. Shah, J.)
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